

ROBERT P. MARSHALL

IBLA 78-403

Decided August 21, 1978

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 17966.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Lands Subject to

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available as prescribed by 43 CFR Subpart 3112.

APPEARANCES: Robert P. Marshall, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Robert P. Marshall appeals from the April 13, 1978, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his offer to lease for oil and gas (noncompetitive acquired lands lease) the following lands in Sharkey County, Mississippi:

T. 10 N., R. 6 W., Choctaw meridian
section 28: all
section 29: all
section 32: N 1/2
section 33: N 1/2

By letter dated October 6, 1977, the director of the Eastern States Office advised that appellant sections 28 and 29 of the above-described lands were posted on Simultaneous List 66-4 (April 18, 1966) and that these lands appeared to be available for leasing.

Appellant's offer to lease all of the above-described lands was received in the Eastern States Office on October 13, 1977. In its decision, BLM stated that these lands had been previously leased as ES 01206 and ES 01206-A which leases had expired on June 30, 1976,

and that thereafter the lands had not been posted on a simultaneous list. BLM rejected appellant's offer stating as follows: "An oil and gas lease offer for public land in which an earlier lease had terminated will be rejected when such offer is filed prior to the posting of the lands for simultaneous filing."

In his statement of reasons appellant contends that the lands in question were subject to simultaneous lease offers "from the unofficial notation of [the expiration of the previous leases] until 10 AM on the fifth working day thereafter," under 43 CFR 3112.1-2. Appellant asserts that no official notation of the expiration of leases at the end of their primary term is required before the lands become available for new oil and gas lease offers and that therefore BLM's reason for rejection of his offer (lands not posted to simultaneous list) is invalid.

The regulation cited by appellant, 43 CFR 3112.1-2, provides:

On the third Monday of each month, or the first working day thereafter, if the proper office is not officially open on the third Monday, there will be posted on the bulletin board in each proper office a list of the lands in leases which expired, were canceled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing unit identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3101.1-4, by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds.

[1] Appellant filed an over-the-counter offer for the lands in issue. The above regulation, as well as the other provisions in subpart 3112 govern the procedures concerned with simultaneous offers. They provide that land formerly under oil and gas lease must be posted under the simultaneous filing procedures and only if no simultaneous filings are received does the land become available to over-the-counter filing. David A. Provinse, 33 IBLA 312 (1978). Nothing in section 3112.1-2 provides that lands formerly under lease will become available for new lease offers automatically, nor is it required that such posting occur at a particular point in time after expiration of a previous lease. Appellant concedes that the lands in his offer were not posted as available for filings. A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not yet been posted as available as prescribed by 43 CFR subpart 3112. Provinse, supra; Jack E. Griffin, 7 IBLA 155 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

